IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.114 of 2006
In
Company Petition No.640 of 2005
Connected with
Company Application No.433 of 2005

Dinesh Vrajlal Lakhani. .. .. Appellant
(original intervenor)
v/s.

Thirumalai Chemcials Limited .. Respondent
(original petitioner)

Mr.Dinesh V. Lakhani, appellant in person.

Mr.Virag Tulzapurkar with Ms.Priya S. Dwarkadas and Mr.R. Aditya Narayan i/by M/s.Wadia Ghandy & Co. for respondent.

CORAM : H.L. GOKHALE &
S.R. DONGAONKAR, JJ.

DATED : 27th March 2006

P.C. :

1. Heard the appellant in person. Mr.Virag Tulzapurkar, Senior Advocate appears for the respondent.

2. The appellant herein seeks to challenge the judgment and order dated 31st January 2006 passed by a learned Single Judge making Company Petition No.639 of 2005 absolute in terms of prayer clauses (a) to (k) thereof and rejecting the objections raised by the appellant herein.

3. Company Petition No.639 of 2005 and Company Petition No.640 of 2005 were filed by Thirumalai Chemicals Limited and Chemidye Manufacturing Company Pvt. Ltd. seeking the sanction of a scheme of amalgamation whereunder this Chemidye Manufacturing Company was to amalgamate with Thirumalai Chemicals Limited. These petitions were filed under Sections 391 to 394 of the Companies Act, 1956. As stated above, those petitions were allowed. The appellant herein was the only objector. In view of his objections having been rejected, this Appeal has been filed.

4. The appellant has raised four points in this Appeal. The first submission was that the provisions of the listing agreement have not been followed and the particulars with respect to the pre and post arrangement concerning the position of the directors and their shareholding etc. were not made available to the shareholders as required under Clause 24(h) of the listing agreement. It is submitted that this has become necessary in view of Section 21 of the Securities Contracts (Regulation) Act, 1956, which lays down an additional provision to make this information available to the shareholders. This Clause 24(h)

reads as follows:-

> " (h) The company agrees that in the explanatory statement forwarded by it to the shareholders under section 393 or accompanying a proposed resolution to be passed under section 100 of the Companies Act, 1956, it shall disclose the pre-and post-arrangement or amalgamation (expected) capital structure and shareholding pattern."

Now, as can be seen from this clause, the company very much agrees that in the explanatory statement to be forwarded to the shareholders under Section 393 or the accompaniments of the proposed resolution to be passed under Section 100, it has to disclose this information. Mr.Lakhani submits that this information was not made available and, therefore, the entire process is vitiated.

5. Mr.Tulzapurkar, learned Counsel appearing for the respondent, on the other hand, pointed out that assuming that this is a breach, it will lead to a penal action under Section 23 of the said Act. On facts, however, he pointed out that there were two notices in the same envelope sent to the

shareholders, one was with respect to the annual general meeting which was convened and in the explanatory statement attached thereto all this information was given. It however remained to be stated inadvertently in the explanatory statement attached to the second notice under Section 393. In any case, both these notices and their enclosures were in the same envelope. He, therefore, submitted that if there was intention to keep back this information, such an action would not have been taken.

6. The second defence of Mr.Tulzapurkar is that this listing agreement requires the scheme to be filed with the concerned Stock Exchange which has been filed with both the National Stock Exchange and the Bombay Stock Exchange and both of them have given their approval. Over and above that, public notices were given in newspapers and on the web site and the notices were put up on the notice board of the Stock Exchange. He, therefore, submits that this particular breach which is sought to be alleged, cannot be blown up beyond a proportion. In our view, the submission of Mr.Tulzapurkar is well taken. The breach of Section 21 will lead to a penalty under Section 23. In any case, there is an overriding power

under Sections 391 to 394 of the Companies Court. It is for this Court to see as to whether the scheme is in the interest of the shareholders. Mr.Tulzapurkar has pointed out that the appellant's shareholding is .008% and overwhelming majority of the shareholders to the tune of 99.99.%, have approved the scheme of amalgamation.

7. The second submission of Mr.Lakhani was with respect to the valuation. He fairly stated that though the valuation was done by common auditors of both the companies, the same was not barred. In any case, as far as the aspect of valuation is concerned, though he has many things to say, the Apex Court has in terms held in **Hindustan Lever Employees Union vs. Hindustan Lever Ltd. reported in 1995** reported in **1995 Supplementary (1) SCC 499** that where more than 93% of the shareholders accepted the valuation in that case , there was no reason to interfere. The shareholders are the best judges of their own interest.

8. The third submission of Mr.Lakhani was with respect to mala fides. Having noted the facts as above that this information was supplied in the same envelope, we do not think that there

was any mala fide intention on the part of the respondents in not making the information available in the prescribed manner.

9. The last submission of Mr.Lakhani was with respect to the manner in which the voting was carried out. As far as this aspect is concerned, that is also covered by a judgment of a Division Bench in the case of **Dinesh V. Lakhani vs. Parke Davis (India) Ltd. (Appeal No.261 of 2003 decided on 23rd July 2003**). Paragraphs 28 to 30 of that judgment have dealt with the objections which are sought to be raised in this Appeal. We have no reason to disagree with them.

10. For the reasons stated aforesaid, the Appeal is dismissed.

(H.L. GOKHALE, J.)

(S.R. DONGAONKAR, J.)